



FREEDOM OF INFORMATION ACT 2000 & ENVIRONMENTAL INFORMATION REGULATIONS 2004 POLICY

Policy Control

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1. Introduction and scope

- 1.1. The Freedom of Information Act 2000 and Environmental Information Regulations 2004 form part of the government's commitment to greater openness in the public sector. It is a legal requirement that all public authorities, including Derby Homes, comply with the information governance legislation.
- 1.2. This document is a policy statement, outlining our commitment and approach to Freedom of Information, (FOI), and Environmental Information Regulations, (EIR). The policy applies to Board Members, employees, including temporary staff, who handle information on behalf of Derby Homes, and the public.

2. Definitions

Data Protection Act (2018) (“the DPA”) and UK GDPR

Law relating to privacy and the processing of personal data, including all applicable guidance and codes of practice, issued by the Information Commissioner's Office (ICO), or any replacement EU or UK data protection, or related privacy Law in force in England and Wales:

Environmental Information Regulations (2004) ('EIR's')

Statute which came into force in 2005 gives the right of access to environmental information held by public authorities.

Exceptions

Conditions which may be applied to an EIR in circumstances where requested data may be withheld. All exceptions are qualified and require a public interest test.

Exemptions

Conditions which may be applied to an FOI in circumstances when requested data may be withheld from disclosure. There are two types of exemption: absolute and qualified.

Absolute exemptions:

Exemptions that do not require a public interest test to be undertaken.

Qualified exemptions:

Exemptions which require a public interest test to be completed before they are applied.

Freedom of Information (FOI) Act (2000)

An Act of Parliament which came into force in 2005. The Act gives the public the “right to know” and allows them to request any information held by the Trust.

Information Commissioner's Office (ICO)

An independent regulatory office reporting directly to Parliament overseeing the DPA, FOI Act, and the EIR Act. The Information Commissioner is appointed by the Crown.

Public Interest Test

A public interest test must be applied when a qualified exemption under FOI is proposed. If an exception is being proposed under EIR, a public interest test must be applied. The factors for both for and against the disclosure of requested information are considered. In order to apply the exemption, the factors against disclosure must be seen to outweigh the factors for disclosure.

Publication Scheme

A list of information the ICO expects public authorities to regularly publish. All public authorities are required to produce and maintain a Publication Scheme.

3. Responsibility and compliance

- 3.1. The Managing Director of Derby Homes has overall responsibility for FOI within Derby Homes. The Information Governance Manager has day-to-day responsibility for management and co-ordination of FOI.
- 3.2. All employees and Board Members should be aware of their duties under the Act and should assist the Information Governance Manager when asked. Any member of staff could be asked for information. If employees knowingly fail to comply with this Policy, or the Freedom of Information Act, Derby Homes may take appropriate action under the Disciplinary Procedure.

4. Requests for information

- 4.1. FOI and EIR is intended to cover all information that is not already subject to information access rights, such as DPA. In a number of areas, information is already available under alternative access rights.:
- 4.2. FOI requests must be made in writing; this can include email or other electronic means. There is no requirement for people to mention FOI in their requests, or to say why they need the information. If a request is unclear, clarification will be sought from the applicant. A request will be placed on hold until such time confirmation is received; the clock will then start from the beginning again allowing a further 20 working days to respond.
- 4.3. EIR requests do not need to be made in writing; however, a written record should be made of any verbal requests that are received. There is no requirement for people to mention EIR in their requests or to say why they need the information. If a request is unclear, clarification will be sought from the applicant.
- 4.4. Derby Homes acknowledges that it has a duty to confirm or deny to the applicant whether the information is held.
- 4.5. If the information covered by the FOI can be provided, and is not subject to an exemption, we will provide the information within 20 working days of a request being received. However, if a charge is to be made for information, the time that it takes

between Derby Homes sending out a fees notice and the payment being received, is not counted as part of the 20 working days.

- 4.6. If the information covered by the EIR can be provided, and is not subject to an exception, we will provide the information in 20 working days of a request being received. For requests that are considered complex, a further 20 days can be taken. The applicant must be notified within the 20 days if we are extending the response time by 20 days. However, if a charge is to be made for information, the time that it takes between Derby Homes sending out a fees notice and the payment being received, is not counted as part of the 20 working days.
- 4.7. Information will be provided in the most appropriate format. However, alternative formats can be requested. We will, however, consider the cost implications of such requests and levy appropriate charge where necessary.
- 4.8. We have no obligation to comply with vexatious requests. Vexatious means repeated, unreasonable, and nuisance requests.
- 4.9. We will use all reasonable efforts to assist an applicant to obtain the information required.
- 4.10. 'business as usual' request is a request for information or services that a service area would expect to receive in its normal day to day operation. Any request received that indicates it is an FOI or EIR request cannot be treated in as 'business as usual.'
- 4.11. Derby Homes is not required to create new information which it does not hold in order to meet a request for information.
- 4.12. If it is not clear what information is being requested in the FOI or EIR, Derby Homes has a duty to ask the applicant for clarification. In these circumstances, the response clock stops until clarification is received, once sufficient clarification is received, the 20 day clock is re-calculated and a new deadline provided to the applicant.
- 4.13. Information must not be deliberately withheld or disposed of which is covered by the legislation. If you are not happy with information disclosed in our response, contact Foi.Derbyhomes@derbyhomes.org or contact the Information Governance Manager, information.governance@derbyhomes.org to obtain advice on exemptions or exceptions that may apply.
- 4.14. If employees knowingly do not comply with Derby Homes, policies, procedures or guidelines, Derby Homes may take appropriate action in accordance with the Employee Code of Conduct.

5. Publication Scheme

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- 5.1. Derby Homes is required to produce and maintain a Publication Scheme; this is available on our website. The publication scheme is a directory of information and publications that are routinely available. Derby Homes has adopted the ICO model publication scheme.

6. Charges

- 6.1. Generally, information will be provided free of charge up to the appropriate cost limit, which is the equivalent of one person, 18 hours @ £25 per hour, total £450. Where cost exceeds £450, the organisation can issue a refusal notice, or ask the applicant to pay the additional cost, which is determined on a case by case basis.
- 6.2. We have the right to withhold information if the required fee is not paid.

7. Exemptions and Exceptions

- 7.1. Certain information held by Derby Homes is exempt from FOI. There are 24 exemptions. These fall into two categories.

Absolute exemptions: These exemptions are unconditional. Examples of these include information accessible by other means, information provided to Derby Homes in confidence, and personal information covered by the DPA; a full list is given below:

- Section 21. Information accessible to applicant by other means.
- Section 23. Information supplied by, or relating to, bodies dealing with security matters.
- Section 32. Court records, etc.
- Section 34. Parliamentary privilege.
- Section 40. Personal information.
- Section 41. Information provided in confidence.
- Section 44. Prohibitions on disclosure.

Qualified exemptions: This category of exemption is subject to a public interest test. In these cases, we will look at whether the balance of public interest is weighted in favour of giving the information requested. Where this is found to be the case, the information will be given. Examples of qualified exemptions include commercially sensitive information and information that would prejudice the health and safety of an individual. A full list is given below:

- Section 22. Information intended for future publication.
- Section 24. National security.
- Section 25. Certificates under ss. 23 and 24: supplementary provisions.
- Section 26. Defence.
- Section 27. International relations.
- Section 28. Relations within the United Kingdom.
- Section 29. The economy.
- Section 30. Investigations and proceedings conducted by public authorities.

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- Section 31. Law enforcement.
 - Section 33. Audit functions.
 - Section 35. Formulation of government policy, etc.
 - Section 36. Prejudice to effective conduct of public affairs.
 - Section 37. Communications with Her Majesty, etc. and honours.
 - Section 38. Health and safety.
 - Section 39. Environmental information.
 - Section 42. Legal professional privilege.
 - Section 43. Commercial interests.

- 7.2. Under EIR all exceptions are subject to the public interest test, to determine if the information should be withheld or disclosed. If an EIR is to be withheld, please contact the Information Governance Manager for advice.
- 7.3. It is our intention to apply exemptions and exceptions in appropriate circumstances.
- 7.4. For example, we recognise that some information supplied to us is confidential in nature, or commercially sensitive. We will have regard to that in our application of exemptions or exceptions.
- 7.5. We will make clear statements to parties contracting with Derby Homes to make sure they are aware of our obligations to disclose under FOI and EIR, and we will resist attempts to impose confidentiality obligations on Derby Homes where the information is not confidential in nature.

8. If a request is turned down or refused

- 8.1. We will always confirm or deny whether or not we hold information requested and we will respond promptly to information requests. We will either provide the information requested or, if it is withheld, explain why it has not been provided, quoting the relevant exemption or exception under the Legislation. We will only turn refuse to respond to a request for information in the following circumstances:
 - it falls into one of the exemption or exception categories
 - the request is considered vexatious
 - the required fee is not paid within three months.

9. Transferring a request to another body

- 9.1. If it is found that another public body holds the information requested, we will advise the applicant where that information can be obtained. Any part of the request that relates to Derby Homes will be handled in the normal way.

10. Records Management

- 10.1. All Board Members and employees must make sure that information for which they are responsible is held in an organised and systematic way, which will allow it to be identified and retrieved.

11. Other relevant policies and procedures

- Data Protection Act 2018 Policy

Further guidance

Freedom of Information and Environmental Information Regulations Is available on DHNet and from the Information Governance Manager

Telephone: 01332 888606

Email: Foi.Derbyhomes@derbyhomes.org

Further Information on FOI and EIR can be found on the Information Commissioners Office (ICO) or you can contact them directly:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 0303 123 1113 (local rate) or 01625 545 745 if you prefer to use a national rate number.

www.ico.gov.uk